

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	Case No: 21-cr-460-APM
	:	
v.	:	
	:	18 U.S.C. §§ 371, 1512(c)(2), 2
CALEB BERRY,	:	
	:	
Defendant.	:	

ADDENDUM TO STATEMENT OF OFFENSE

In *United States v. Fischer*, 603 U.S. ----, 144 S. Ct. 2176 (June 28, 2024), the Supreme Court held that to prove a violation of 18 U.S.C. § 1512(c)(2) “the Government must establish that the defendant impaired the availability or integrity for use in an official proceeding of records, documents, objects, or as we earlier explained, other things used in the proceeding, or attempted to do so.” 144 S. Ct. at 2190. In light of this holding, and pursuant to Federal Rule of Criminal Procedure 11, the United States of America, by and through its attorney, the United States Attorney for the District of Columbia, and the defendant, with the concurrence of his attorney, agree and stipulate to the below supplemental factual basis for the defendant’s guilty plea—that is, in addition to the facts admitted in the original Statement of Offense, if this case were to proceed to trial, the parties stipulate that the United States could prove the below additional facts beyond a reasonable doubt:

The Defendant’s Planning with Co-Conspirators in Advance of January 6, 2021

1. As the defendant testified during the trial of *United States v. Roberto Minuta, et al.*, No. 22-cr-15-APM, he joined the Oath Keepers in November 2020, after the presidential election, because he “felt that the Constitution was being ignored” and “wanted to do something” about it.

2. As a member of the Florida chapter of the Oath Keepers, Berry participated in a number of chat groups on an encrypted messaging application called "Signal." One such group was entitled, "OKFL Hangout."

3. On that "OKFL Hangout" chat, the defendant and others discussed the need to take action to oppose what they saw as a fraudulent and stolen election.

- a. On November 25, 2020, the defendant wrote to the group, "I'm going to be honest. With the dishonesty in this election, we reach further and further to the brink of no return. I'm fighting for the future of my family and my children, for their children. I'll die for it."
- b. On December 6, another Florida Oath Keeper named Jason Dolan, a military veteran, messaged the group: "I'm waiting on all legal remedies (from legitimate or illegitimate) courts to be solved. I have Christmas plans with family but come the new year (for me anyway) I have to be mentally prepared for however far I'm willing to go to stand for America, for the Constitution, for the President & for the survival of our ideals. . . . [T]his time there is no coming back, no pay, now awards, no homecomings, and if I'm lucky I get a prison sentence, tagged with treason, or a bullet from the very people I would protect. Yet I swore to defend this country against all enemies foreign & domestic. I think my biggest trouble is trying to convince myself to say good bye to my family, after all they had to endure, with the likelihood of never seeing them again...again."
- c. On December 20, another Florida Oath Keeper named Graydon Young wrote, "So far they have successfully suppressed and ignored our marches and protests. Something more is required."

4. In late December 2020, the group began to focus on January 6, 2021, and the proceeding before Congress to certify the election, as a date and occasion for action.

5. For example, on December 24, 2020, Florida Oath Keepers leader Kelly Meggs wrote, "It's gonna be a WILD time in DC; we gotta get the crowd going during the day; I think we get everyone up good and close to the Capitol bldg so they can here is inside; then at night well whatever happens happens." Berry responded, "I'm ready for it."

6. The next day, Meggs wrote, "Time for a gut check from everyone in this room. If this is our course where do you fit in. This is where we are, we have been invaded. Patriots are going to stand and we have to lead them!" Young responded, "We need MUCH larger numbers PDQ [pretty damn quick]," and expressed his hope that their mission to D.C. would not be a "fool's errand." Oath Keepers leader Stewart Rhodes then jumped into the chat to re-assure Young and the other Florida Oath Keepers that it would not be a fool's errand. Rhodes continued, "I think Congress will screw him [President Trump] over," and "[t]he only chance we/he has is if we scare the shit out of them and convince them it will be torches and pitchforks time is they don't do the right thing." Accordingly, Rhodes told the Florida Oath Keepers that they would show President Trump they were willing to help him fight to stay in power, and "if he fails to act, then we will. He needs to understand that we will have no choice."

7. Understanding these plans, the defendant traveled to D.C. with other members of the Florida Oath Keepers to be part of the Oath Keepers' January 6 operation. The defendant understood that other members of the group had brought firearms to support the operation, which they stored with a "quick reaction force" at a hotel in Virginia. The defendant understood that he would have access to and be allowed to use these weapons if needed in furtherance of the operation.

The Defendant's Participation in the Capitol Riot on January 6, 2021

8. As the defendant admitted in the original statement of offense, which he adopted during his guilty plea, on the afternoon of January 6, 2021, the defendant marched with at least some of the co-conspirators towards the U.S. Capitol.

9. When they reached the Capitol grounds, the group huddled around Meggs, who told them that they were “going to try to stop the vote count.” The group then walked up the stairs on the east side of the Capitol in a “stack” formation, with each person keeping a hand on the shoulder of the person in front, and then unlawfully entered the Capitol building.

10. As the defendant admitted in the original statement of offense, “at the time he unlawfully entered the Capitol, he believed that he and the co-conspirators were trying to obstruct, influence, and impede an official proceeding, that is, a proceeding before Congress, specifically, Congress’s certification of the Electoral College vote,” and that he “intended to affect the government by stopping or delaying the Congressional proceeding, and, in fact, did so, by intimidating and coercing government personnel who were participating in or supporting the Congressional proceeding.”

11. The defendant’s efforts to stop, impede, and delay the certification proceeding targeted—and were intended to target—all aspects of the proceeding, including impairing the availability or integrity of the records, documents, objects, and other things used in the proceeding. This includes, but is not limited to, the ballot certificates at issue in the proceeding.


Limited Nature of Factual Basis

12. This addendum is meant to supplement and not replace the original Statement of Offense. It is not intended to constitute a complete statement of all facts known by the defendant or the government. Rather, it is a limited supplemental statement of facts intended to provide the minimal necessary factual predicate for the defendant's guilty plea.

Respectfully submitted,

MATTHEW M. GRAVES
United States Attorney
DC Bar No. 481052

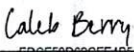
By:


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DEFENDANT'S ACKNOWLEDGMENT

I, Caleb Berry, have read this Statement of the Offense and have discussed it with my attorney. I fully understand this Statement of the Offense. I agree and acknowledge by my signature that this Statement of the Offense is true and accurate. I do this voluntarily and of my own free will. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Statement of the Offense fully.

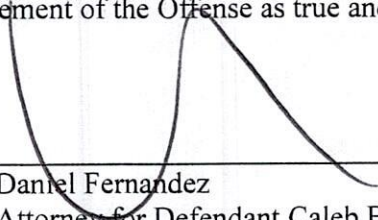
Date: 10/15/2024

Signed by:

Caleb Berry
Defendant

ATTORNEY'S ACKNOWLEDGMENT

I have read this Statement of the Offense and have reviewed it with my client fully. I concur in my client's desire to adopt this Statement of the Offense as true and accurate.

Date: 10/16/24


Daniel Fernandez
Attorney for Defendant Caleb Berry